

## HOUSE BILL NO. 178

INTRODUCED BY S. FISHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS ON PAYMENT OF COSTS FOR EDUCATIONAL SERVICES FOR CHILDREN WITH EMOTIONAL DISTURBANCES BY EXPANDING PAYMENT TO INCLUDE RESIDENTIAL TREATMENT CENTERS; AMENDING SECTIONS 20-7-419, 20-7-420, 20-7-435, AND 20-7-436, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 20-7-419, MCA, is amended to read:

**"20-7-419. Rules.** The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

- (1) the calculation of tuition under 20-7-420;
- (2) the calculation and distribution of funds under 20-7-435; and
- (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, residential treatment centers, and public schools."

**Section 2.** Section 20-7-420, MCA, is amended to read:

**"20-7-420. Residency requirements -- financial responsibility for special education.** (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or

1 an out-of-state private residential facility.

2 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state  
3 residential treatment center, residential treatment facility, or children's psychiatric hospital, as defined in  
4 20-7-436, and the educational services are provided by a public school district under the provisions of  
5 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the  
6 services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's  
7 costs of providing education and related services. Payments must be made from funds appropriated for  
8 this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any  
9 per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance  
10 from available funds. However, the amount spent from available funds for this purpose may not exceed  
11 \$500,000 during a biennium.

12 (4) A state agency that makes a placement of a child with a disability is responsible for the  
13 financial costs of room and board and the treatment of the child. The state agency that makes an  
14 out-of-state placement of a child with a disability is responsible for the education fees required to provide  
15 a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

16

17 **Section 3.** Section 20-7-435, MCA, is amended to read:

18 **"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and,**  
19 **in-state residential treatment facilities, and in-state residential treatment programs centers for eligible**  
20 **children with emotional disturbances.** (1) It is the intent of the legislature that eligible children in in-state  
21 children's psychiatric hospitals ~~and,~~ residential treatment facilities, and residential treatment centers be  
22 provided with an appropriate educational opportunity in a cost-effective manner, including the provision  
23 of a free appropriate public education for an eligible child with a disability that is consistent with state  
24 standards for the provision of special education and related services. General education programs for  
25 eligible children without disabilities must be provided in accordance with the requirements for a nonpublic  
26 school under the provisions of 20-5-109.

27 (2) The superintendent of public instruction may contract with an in-state children's psychiatric  
28 hospital or residential treatment facility or center for provision of an educational program for an eligible  
29 child in the hospital or treatment facility or center.

30 (3) Whenever the superintendent of public instruction contracts with an in-state children's

1 psychiatric hospital or residential treatment facility or center for provision of an educational program for  
2 an eligible child in the children's psychiatric hospital or residential treatment facility or center, the  
3 superintendent of public instruction shall:

4 (a) ensure the provision of a free appropriate public education and an education that is consistent  
5 with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential  
6 treatment facility or center;

7 (b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs  
8 for providing special education, including the costs of retirement benefits, federal social security system  
9 contributions, and unemployment compensation insurance;

10 (c) from appropriations provided for this purpose, fund any approved allowable costs under this  
11 section, with the exception of services for which reimbursement is made under any provision of state or  
12 federal law or an insurance policy;

13 (d) provide funding for allowable costs according to a proration based on average daily  
14 membership.

15 (4) A supplemental education fee or tuition may not be charged for an eligible Montana child who  
16 receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital  
17 or residential treatment facility or center.

18 (5) If a children's psychiatric hospital or residential treatment facility or center fails to provide an  
19 education in accordance with 20-5-109 or a free appropriate public education under the provisions of this  
20 part for an eligible child at the children's psychiatric hospital or residential treatment facility or center or  
21 fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction  
22 shall negotiate with the school district in which the children's psychiatric hospital or residential treatment  
23 facility or center is located for the supervision and implementation of an appropriate educational program  
24 that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of  
25 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility or center.  
26 The amount negotiated with the school district must include all education and related services costs that  
27 may be negotiated under the provisions of subsection (3) and all education and related services costs  
28 necessary to fulfill the requirements of providing the child with an education.

29 (6) Funds provided to a district under this section, including funds received under the provisions  
30 of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308."

**Section 4.** Section 20-7-436, MCA, is amended to read:

**"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, and who:

(a) is emotionally disturbed, as defined in 20-7-401, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems; or

(b) is a delinquent youth or a youth in need of intervention, as those terms are defined in 41-5-103, who is placed in a residential treatment center for treatment.

(3) (a) "Residential treatment center" means a center in the state that:

(i) is licensed by the state as a youth care facility under 41-3-1142;

(ii) operates for the sole purpose of providing residential treatment in a staff-secured facility or secure facility to individuals under 19 years of age; and

(iii) is accredited by the Montana board of public education, northwest association of schools and colleges, or other comparable organization.

(b) The term does not include:

(i) a state youth correctional facility, as defined in 41-5-103, or correctional programs operated by or under contract with the department of corrections in which a primary population of youth who have

1 been adjudicated under 41-5-1513 and who are under the care and custody of the department are served;  
2 or

3 (ii) programs for children and youth for whom treatment of chemical dependency is the primary  
4 reason for treatment.

5 (c) As used in this subsection (3), a "staff-secured facility" or "secure facility" means one in which  
6 the student by virtue of a court order is restricted and does not have access to education in a public school  
7 setting.

8 ~~(3)~~(4) (a) "Residential treatment facility" means a facility in the state that:

9 (i) provides services for children or youth with emotional disturbances;

10 (ii) operates for the primary purpose of providing residential psychiatric care to individuals under  
11 21 years of age;

12 (iii) is licensed by the department of public health and human services; and

13 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing  
14 psychiatric services to individuals under 21 years of age; or

15 (v) notwithstanding the provisions of subsections ~~(3)(a)(iii) and (3)(a)(iv)~~ (4)(a)(iii) and (4)(a)(iv),  
16 has received a certificate of need from the department of public health and human services pursuant to  
17 Title 50, chapter 5, part 3, prior to January 1, 1993.

18 (b) The term does not include programs for children and youth for whom the treatment of chemical  
19 dependency is the primary reason for treatment."

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21 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2001.

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